IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 423 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAY SURENDRABHAI BHATT - Applicant(s)

Versus

THE STATE OF GUJARAT - Respondent(s)

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Appearance :

MR DHAVAL D VYAS for Petitioner No(s).: 1.

Mr. LR Pujari, Addl. PUBLIC PROSECUTOR for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date : 15/07/2005

ORAL JUDGMENT

1. Heard ld. Counsel Mr. Dhaval D.Vyas for the petitioner. By means of present petition, the petitioner has challenged the legality and validity of the order dated 10.05.2005 passed by the ld. Addl. Sessions Judge,

Fast Track court, Gondal below the Examination in Chief of Prosecution Witness No.13 Pravinbhai Labhshankar Mehta at Exh.33 in Sessions Case No.48/1997, whereby the ld. Addl. Sessions Judge permitted the prosecution to cross-examine said PW No.13 Shri Pravinbhai, treating him as a hostile witness.

2. The prosecution, during recording of deposition of said PW No.13 Pravinbhai, made a request to cross-examine him saying that the version of the witness is “hostile” to the case of the prosecution in the background of the statements recorded by the investigating agency. According to the prosecution, in presence of this witness, the accused has demonstrated certain things. Of course, this witness is not a panch witness and is an independent witness through which the prosecution intends to prove the conduct and other aspects including extra-judicial confession by the accused.

3. When ld. APP found that this witness is not sticking to his previous statement and found that the approach of the witness is hostile, he sought permission to cross-examine him and it is found that the request was made in accordance with law. It is true that in all such cases, permission may not be granted and this depends on the facts of each case and each witness who is sought to be treated as “hostile”. Defence counsel, in the present case, objected the said request but after considering the resistance placed by the defence counsel, ld. Addl. Sessions Judge granted permission, as requested.

4. Hypothetically, if PW No.13 Pravinbhai would have supported the case of prosecution, in that event, his oral evidence in conformity with his previous police

statement qua the conduct of the accused, extra-judicial confession made and demonstration given by the accused, could have been received as a legal piece of evidence in the trial and such a evidence obviously would have been a very important piece of evidence in favour of the prosecution and incriminating against the accused. When a witness is called by a party shows hostility either to either his or her previous statement made either oral or written to the say of the party calling or such witness even found otherwise hostile, the prosecuting agency obviously can pray to disprove the statement made before the Court by confronting very witness with his/her previous statement. If such a permission is not granted, then it would be difficult for the prosecution even to argue that that particular witness requires to be condemned or his/her version is not worth reliable for any purpose. It is not the case or say of present petitioner that the witness wasn't competent to state facts confirming the case of prosecution on account of any legal infirmity or bar. Applying this test, the order is found valid.

5. There is one more point, though resisted by ld. Counsel Mr. Vyas, pertinent to note is that the order passed by the ld. Addl. Sessions Judge is during the course of recording of deposition of PW No.13 Pravinbhai, very similar requests were made when other witnesses were being examined and necessary permissions to treat them hostile witnesses were also granted and these orders are not challenged. So, in this background of facts, the order under challenge can legally be termed as an interlocutory order and revision application would barred by an embargo of sub-section (2) of Sec.397 of CrPC.

6. So, on both these counts, there is no merit in this Cri. Rev.Application and the same is hereby dismissed. Ld. APP appearing in the lower Court shall now proceed with the cross-examination of PW No.13 Pravinbhai as permitted by the ld. Trial Judge treating him hostile to the prosecution.

7. Ld.APP Mr. Pujari has nothing to add.

(C.K. BUCH, J)

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